

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN**

In re)	
)	Chapter 9
CITY OF DETROIT, MICHIGAN,)	
)	Case No. 13-53846-swr
Debtor.)	
)	Hon. Steven W. Rhodes
)	
)	
)	
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**EEPK’S DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON
APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Appellants Hypothekenbank Frankfurt AG, Hypothekenbank Frankfurt International S.A., and Erste Europäische Pfandbrief- und Kommunalkreditbank Aktiengesellschaft in Luxemburg S.A. (collectively “EEPK”), by their undersigned attorneys and pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), hereby designate the items listed herein for inclusion in the record to be transmitted to the United States District Court for the Eastern District of Michigan (the “District Court”) in connection with their appeal from the *Order Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(e), 364(f), 503, 507(a)(2), 904, 921 and 922 (I) Approving Postpetition Financing, (II) Granting Liens and Providing Superpriority Claim Status and (III) Modifying Automatic Stay* entered on April 2, 2014 (the “Financing Order”) [D.I. 3607], and further provide their statement of issues to be presented on appeal from the Financing Order. EEPK filed a Notice of Appeal, appealing from the Financing Order, on April 16, 2014 [D.I. 4108].

I. Designation of the Items to be Included in the Record on Appeal

EEPK designates the following items, together with all exhibits, schedules and other attachments thereto (whether or not explicitly listed below) for inclusion in the record to be transmitted to the District Court in connection with the appeal from the Financing Order.

Designation No.	Filing Date	Docket No. or Exhibit No.	Document Title
1	11/05/2013	1520	Motion of the Debtor for a Final Order Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(e), 364(f), 503, 507(a)(2), 904, 921 and 922 (I) Approving Postpetition Financing, (II) Granting Liens and Providing Superpriority Claim Status and (III) Modifying Automatic Stay
2	11/11/2013	1640	Motion of the Objectors for Leave to Conduct Limited Discovery in Connection with Motion of the Debtor for a Final Order Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(e), 364(f), 503, 507(a)(2), 904, 921 and 922 (I) Approving Postpetition Financing, (II) Granting Liens and Providing Superpriority Claim Status and (III) Modifying Automatic Stay
3	11/15/2013	1743	Order Regarding Motion of the Objectors for Leave to Conduct Limited Discovery in Connection with Motion of the Debtor for a Final Order Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(e), 364(f), 503, 507(a)(2), 904, 921 and 922 (I) Approving Postpetition Financing, (II) Granting Liens and Providing Superpriority Claim Status and (III) Modifying Automatic Stay
4	11/18/2013	1761	Notice of Fee Letter Filed by City of Detroit
5	11/22/2013	1788	Motion of the City of Detroit for Entry of an Order Establishing Pre-Trial and Trial Procedures and Setting Additional Hearings

Designation No.	Filing Date	Docket No. or Exhibit No.	Document Title
6	11/27/2013	1835	EEPK's Objection to Motion of the Debtor for a Final Order Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(e), 364(f), 503, 507(a)(2), 904, 921 and 922 (I) Approving Postpetition Financing, (II) Granting Liens and Providing Superpriority Claim Status and (III) Modifying Automatic Stay
7	11/27/2013	1838	The Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees' Objection to Motion of the Debtor for a Final Order Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(e), 364(f), 503, 507(a)(2), 904, 921 and 922 (I) Approving Postpetition Financing, (II) Granting Liens and Providing Superpriority Claim Status and (III) Modifying Automatic Stay
8	11/27/2013	1842	Assured Guaranty Municipal Corp.'s Objection to Motion of the Debtor for a Final Order Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(e), 364(f), 503, 507(a)(2), 904, 921 and 922 (I) Approving Postpetition Financing, (II) Granting Liens and Providing Superpriority Claim Status and (III) Modifying Automatic Stay
9	11/27/2013	1844	Retired Detroit Police and Fire Fighters Association's Objection to Motion of the Debtor for a Final Order Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(e), 364(f), 503, 507(a)(2), 904, 921 and 922 (I) Approving Postpetition Financing, (II) Granting Liens and Providing Superpriority Claim Status and (III) Modifying Automatic Stay

Designation No.	Filing Date	Docket No. or Exhibit No.	Document Title
10	11/27/2013	1847	Financial Guaranty Insurance Company's Objection to Motion of the Debtor for a Final Order Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(e), 364(f), 503, 507(a)(2), 904, 921 and 922 (I) Approving Postpetition Financing, (II) Granting Liens and Providing Superpriority Claim Status and (III) Modifying Automatic Stay
11	11/27/2013	1851	Ambac Assurance Corporation's Objection to Motion of the Debtor for a Final Order Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(e), 364(f), 503, 507(a)(2), 904, 921 and 922 (I) Approving Postpetition Financing, (II) Granting Liens and Providing Superpriority Claim Status and (III) Modifying Automatic Stay
12	11/27/2013	1852	Wilmington Trust Company, N.A.'s Joinder to (a) Objection Of Financial Guaranty Insurance Company To Motion Of The Debtor For A Final Order Pursuant To 11 U.S.C. §§ 105, 362, 364(C)(1), 364(C)(2), 364(E), 364(F), 503, 507(A)(2), 904, 921 And 922 (I) Approving Postpetition Financing, (II) Granting Liens And Providing Superpriority Claim Status And (III) Modifying Automatic Stay and (b) Objection Of Hypothekenbank Frankfurt AG, Hypothekenbank Frankfurt International S.A., Erste Europäische Pfandbrief – und Kommunalkreditbank Aktiengesellschaft In Luxemburg S.A., And FMS Wertmanagement Service GmbH, As Servicer To FMS Wertmanagement To Motion Of The Debtor For A Final Order Pursuant To 11 U.S.C. §§ 105, 362, 364(C)(1), 364(C)(2), 364(E), 364(F), 503, 507(A)(2), 904, 921 And 922 (I) Approving Postpetition Financing, (II) Granting Liens And Providing Superpriority Claim Status And (III) Modifying Automatic Stay

Designation No.	Filing Date	Docket No. or Exhibit No.	Document Title
13	11/27/2013	1863	National Public Finance Guarantee Corporation's Objection to Motion of the Debtor for a Final Order Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(e), 364(f), 503, 507(a)(2), 904, 921 and 922 (I) Approving Postpetition Financing, (II) Granting Liens and Providing Superpriority Claim Status and (III) Modifying Automatic Stay
14	11/27/2013	1867	General Retirement System of the City of Detroit, Police and Fire Retirement System of the City of Detroit's Objection to Motion of the Debtor for a Final Order Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(e), 364(f), 503, 507(a)(2), 904, 921 and 922 (I) Approving Postpetition Financing, (II) Granting Liens and Providing Superpriority Claim Status and (III) Modifying Automatic Stay
15	11/27/2013	1870	Objection of Syncora Guarantee Inc. and Syncora Capital Assurance Inc. to Motion of the Debtor for a Final Order Pursuant to 11 U.S.C. §§ 105, 362, 364(C)(1), 364(C)(2), 364(E), 364(F), 503, 507(A)(2), 904, 921 and 922 (I) Approving Postpetition Financing, (II) Granting Liens and Providing Superpriority Claim Status and (III) Modifying Automatic Stay
16	11/28/2013	1875	Transcript of November 27, 2013 Hearing
17	12/10/2013	2023	Omnibus Reply of the Debtor to Objections to Debtor's Motion for Approval of Postpetition Financing
18	12/15/2013	2132	Transcript of December 13, 2013 Hearing
19	12/16/2013	2156	EEPK's Second Amended List of Exhibits for Hearing on Motion to Approve Postpetition Financing and Motion to Approve Swap Settlement
20	12/16/2013	2185	Exhibit Lists and Objections for Hearing Regarding City of Detroit's Assumption Motion and Motion to Approve Postpetition Financing

Designation No.	Filing Date	Docket No. or Exhibit No.	Document Title
21	12/20/2013	2280	Transcript of December 18, 2013 Hearing
22	12/23/2013	2299	Transcript of December 17, 2013 Hearing
23	01/3/2014	2364	Second Amended Exhibit Lists and Objections for Hearing re City of Detroit's Assumption Motion and Motion to Approve Postpetition Financing
24	01/10/2014	2447	Transcript of January 3, 2014 Hearing
25	N/A	City Ex 56	Email from Doak to Gerbino regarding City of Detroit financing, including attachments
26	N/A	City Ex 61	Response to City of Detroit RFP from J.P. Morgan
27	N/A	City Ex 88	Miller Buckfire, "Post-Petition Financing Discussion"
28	N/A	City Ex 89	Miller Buckfire, "Draft Detroit Post-Petition Financing Commitment Letter Summaries
29	N/A	City Ex 90	Miller Buckfire, "Briefing Materials Prepared for Members of City Council"
30	N/A	City Ex 91	Miller Buckfire, "Briefing Materials Prepared for City Council Closed Session"
31	N/A	City Ex 93	Barclay's Fee Letter fully executed by Barclay's and City
32	N/A	City Ex 94	Barclay's Commitment Letter, including Term Sheets, fully executed by Barclays and City
33	N/A	City Ex 96	Letter from Orr to Michigan State Treasurer Andy Dillon rearding Financing
34	N/A	City Ex 97	Letter from State Treasurer Dillon to Orr Approving Financing
35	N/A	City Ex 98	Email from Hayes to City Council attaching October 11, 2013 Letter from Orr to All City Council Members re Emergency Manager's Order No. 17

Designation No.	Filing Date	Docket No. or Exhibit No.	Document Title
36	N/A	City Ex 100	Letter from Bulger to Goodrich regarding City of Detroit's submission to Local Emergency Financial Assistance Loan Board
37	N/A	City Ex 106	Project Piston Cash Flow Forecast- Monthly (Fys 2013, 14, 15 Scenario)
38	N/A	City Ex 107	Project Piston Cash Flow Forecast (including Restructuring Scenario)
39	N/A	City Ex 108	Ernst & Young, Project Piston Cash Flow Forecast-through FY 2017 (DIP Financing Scenario)
40	N/A	City Ex 109	Ernst & Young, Project Piston Cash Flow Forecast-through FY 2017 (No Casino Trap; No DIP)
41	N/A	City Ex 110	Ernest & Young, Project Piston Cash Flow Forecast- through FY 2017 (Casino Trap; No DIP)
42	N/A	City Ex 111	Ernst & Young, Illustrative Cash Chart
43	N/A	Syncora 223	Exit Engagement Letter
44	N/A	Syncora 225	Letter Dated August 6, 2013 with attached term sheets
45	N/A	Syncora 233	Responses to Inquiries from City Council
46	N/A	Syncora 234	Transcript of 8/30/2013 Deposition of Kevyn D. Orr
47	N/A	Syncora 235	Transcript of 8/29/2013 Deposition of Kenneth Buckfire
48	N/A	Syncora 236	Transcript of 12/4/2013 Deposition of James Doak
49	N/A	Syncora 237	Transcript of 12/9/2013 Deposition of Kevyn D. Orr
50	N/A	Syncora 238	Transcript of 12/10/2013 Deposition of Kenneth Buckfire
51	N/A	Syncora 240	Transcript of 12/12/2013 Continuation of Deposition of Kevyn D. Orr

Designation No.	Filing Date	Docket No. or Exhibit No.	Document Title
52	N/A	FGIC 307	Project Piston Cash Flow Forecast- through FY 2017 (No Casino Trap; No DIP) dated 10/3/13
53	N/A	FGIC 308	Quarterly Report of the Emergency Manager, dated October 15, 2013
54	N/A	EEPK 801	Solicitation Materials to Prospective Lenders (Letter and Term Sheet)
55	N/A	EEPK 802	Post-Petition Financing Discussion dated September 26, 2013
56	N/A	EEPK 803	Bond Purchase Agreement - Quality of Life Loan
57	N/A	EEPK 804	Engagement Letter for Exit Financing
58	N/A	EEPK 805	City Council Resolution
59	N/A	RS 1003	Emails from James Doak dated August 29 and 30, 2013
60	N/A	RS 1007	Memorandum dated 10/24/2013 from Brett Hartzell to Kevyn Orr re request for reallocation of \$95 million for FY2014 budget
61	N/A	RS 1013	Email correspondence between James Bonsall, Kevyn Orr, and James Doak dated October 9, 2013
62	N/A	RS1014	Email correspondence from David A. Hall
63	N/A	RS1015	November 6, 2013 correspondence from Harold W. Bulger
64	N/A	RS1019	Email with attachment from James Doak to Irvin Corley, Jr.
65	01/13/2014	N/A	EEPK's PowerPoint presentation used during closing arguments on January 13, 2014
66	01/17/2014	2512	Transcript of January 13, 2014 Hearing
67	01/18/2014	2521	Transcript of January 16, 2014 Hearing

Designation No.	Filing Date	Docket No. or Exhibit No.	Document Title
68	03/06/2014	2921	Notice of Presentment of Order
69	03/13/2014	3012	Objectors' Objection to the Notice of Presentment of Order
70	03/13/2014	3015	Limited Objection of the Detroit Retirement Systems to Notice of Presentment of Final Order Pursuant to 11 U.S.C. §§ 105, 362, 364(C)(1), 364(C)(2), 364(E), 364(F), 503, 507(A)(2), 904, 921 and 922 (I) Approving Postpetition Financing, (II) Granting Liens and Providing Superpriority Claim Status and (III) Modifying the Automatic Stay
71	03/17/2014	3031	Notice of Filing of Certain Marked Transaction Documents Relating to Presentment of Final Order
72	03/24/2014	3173	Order Requiring the City of Detroit to Provide Additional Information Regarding the Postpetition Quality of Life Financing
73	03/28/2014	3280	Reply of the Debtor to Objections to Notice of Presentment of Order Approving Postpetition Financing
74	04/02/2014	3607	Order Pursuant To 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(e), 364(f), 503, 507(a)(2), 904, 921 And 922 (I) Approving Postpetition Financing, (II) Granting Liens And Providing Superpriority Claim Status And (III) Modifying Automatic Stay
75	04/04/2014	3817	Corrected Transcript of April 2, 2014 Hearing
76	04/15/2014	4101	Syncora Guarantee Inc. and Syncora Capital Assurance Inc.'s Notice of Appeal
77	04/16/2014	4108	EEPK's Notice of Appeal
78	11/19/2014	1770	Transcript of November 14, 2013 Hearing

Copies of all items designated for inclusion in the record on appeal, including transcripts and exhibits, have been submitted herewith.

II. Statement of Issues Presented on Appeal¹

1. Whether the Bankruptcy Court erred by permitting the City to use the procedurally truncated process of submitting a notice of presentment of proposed order pursuant to Local Bankruptcy Rule 9021–1(a)(4) to obtain entry of the Financing Order rather than requiring the City to file a motion and provide notice of that motion in accordance with the applicable provisions of section 364 of the Bankruptcy Code and Bankruptcy Rule 4001(c)?

2. Whether the Bankruptcy Court erred by relying upon (a) a solicitation and bidding process for postpetition financing conducted by the City in August and September 2013, seven to eight months before entry of the Financing Order, and (b) a factual record developed (i) in December 2013 and January 2014, three to four months before entry of the Financing Order, and (ii) in connection with a different postpetition financing facility—the Original Quality of Life Facility, as the basis for making findings in April 2014 that the New QOL Financing Facility transaction satisfied the requirement of section 364(c) of the Bankruptcy Code?

3. Whether the Bankruptcy Court erred by, among other things, (a) determining that the City was not required to prove the necessity of the New QOL Financing Facility, (b) precluding the Objectors from taking discovery about the necessity of the New QOL Financing Facility, thereby effectively precluding Objectors from presenting evidence about the necessity of the New QOL Financing Facility, and (c) after so doing, making a finding of fact in the Financing Order that the City had demonstrated the necessity of the postpetition financing?

¹ All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the *Objection to the Notice of Presentment of Final Order Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(f), 503, 507(a)(2), 904, 921, and 922 (I) Approving Postpetition Financing, (II) Granting Liens and Providing Superpriority Claim Status, and (III) Modifying Automatic Stay* [D.I. 3012].

4. Whether the Bankruptcy Court erred by determining the City had proven the unavailability of unsecured financing even though the City did not actually test the market for the availability of unsecured financing?

5. Whether the Bankruptcy Court erred in qualifying Kenneth Buckfire and James Doak as experts in municipal financing when both testified that they had no experience in municipal financing?

6. Whether the Bankruptcy Court erred by making the factual finding that Barclay's had extended the postpetition financing in "good faith" within the meaning of section 364(e) of the Bankruptcy Code even though there was no evidence presented at the April 2, 2014 hearing concerning the negotiations between the City and Barclay's that occurred between the conclusion of the evidentiary hearing on January 13, 2014, the presentation of the proposed Financing Order on March 6, 2014, and the entry of the Financing Order on April 2, 2014?

Dated: April 30, 2014.

Respectfully submitted,

/s/ Matthew G. Summers

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CERTIFICATE OF SERVICE

I, Matthew G. Summers, state that on April 30, 2014, I filed a copy of the foregoing Appellants' Designation of the Items to be Included in the Record on Appeal and Statement of Issues to be Presented on Appeal using the Court's ECF system and I hereby certify that the Court's ECF system has served counsel to the City and all registered users that have appeared in the above-captioned case. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

/s/ Matthew G. Summers

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